

Exhibit 6A

July 22, 2014, Deposition Transcript of Kevyn Orr (excerpted)

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KEVYN ORR, VOLUME 2

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

In Re:) Chapter 9

CITY of DETROIT, MICHIGAN,) Case No. 13-53846

Debtor.) Hon. Steven Rhodes

VOLUME 2

The Videotaped Deposition of KEVYN ORR,

in his personal capacity and as Rule 30(b)(6) witness,

Taken at 2 Woodward Avenue,

Detroit, Michigan,

Commencing at 9:10 a.m.,

Tuesday, July 22, 2014,

Before Leisa M. Pastor, CSR-3500, RPR, CRR.

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2 wanted to be sure that we addressed the human
3 dimension.

4 Q. And you didn't have -- is it -- are you referring to
5 the fact that as of the first plan, you didn't even
6 have an impaired assenting class?

7 A. I think it's fair to say that we did not have -- well,
8 when was the date?

9 Q. Feb 21, 2014.

10 A. I don't know if that's true because I don't recall the
11 dates that we may have reached agreements with the
12 financial creditors.

13 Q. And when you're talking about the human dimension,
14 what are you talking about there?

15 A. Very simply, and I think I've said this before, the --
16 the pensioners are people many of whom are in their
17 sixties, seventies, and eighties and don't have an
18 option. They have worked for the City, most of them
19 have done nothing wrong. They are -- the covenant
20 that the City had with its employees and retirees was
21 that if they perform work for the City that upon their
22 retirement they'd be taken care of for the rest of
23 their natural life, that some of this came as quite a
24 shock to them because they had planned their affairs
25 accordingly. Many of them, like my own family members

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2 or grandmother, wouldn't have options of going back
3 into the job market to supplement income or make up
4 for some of the cuts and that there were -- there was
5 a real-world dimension impact to the people that were
6 going to be affected by these cuts.

7 Q. Putting aside the human dimension, if you'd had an
8 impaired assenting class do you believe that you could
9 have crammed down the first plan on the pensioners?

10 MR. SHUMAKER: Object to the form.

11 A. Yeah, I don't know, I'd have to consult with my
12 attorneys.

13 BY MR. HACKNEY:

14 Q. Okay, and I mean back at the time. Did you believe
15 you could or could not?

16 A. To be honest with you Mr. Hartley (sic), I don't -- I
17 don't -- I don't really recall. I don't really recall
18 that being the crux of the discussion, but it might
19 have been true.

20 Q. Okay. You may have thought you could cram them down,
21 you may have thought you couldn't, you just don't
22 know?

23 A. I just don't remember.

24 Q. Okay. You previously called me Hartley --

25 A. Did I call you Hartley?

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2 Q. There is something in your brain --

3 A. No, I --

4 Q. -- that says Hartley when you see me.

5 A. This is going to be surprising, I have a friend named
6 Hartley, and he reminds me of you.

7 Q. And he's like a handsome, suave guy?

8 A. Let's not get carried away.

9 Q. Now, you did understand that the February 21st plan of
10 adjustment still discriminated in favor of retirees as
11 compared to COPs holders in terms of their respective
12 recoveries, correct?

13 A. Yes, I understand that there were -- there were a lot
14 of reports and the financial community was taking the
15 position that there was discrimination in the plan.

16 Q. But there was objectively discrimination in that first
17 plan, correct?

18 A. There was a higher percentage recovery relative to
19 some of the financial creditors.

20 Q. And you were aware of that discrimination at the time
21 you proposed that plan, correct?

22 A. Yes.

23 Q. And what was your basis for the level of
24 discrimination you proposed in the February 21st plan?

25 A. Well, I believe at that point, we were looking at some

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contribution from third parties, meaning the foundations, the benefactors and others. We were looking, we had been admonished I believe by the court on several occasions to be compassionate in our treatment of individuals and retirees. And unlike financial creditors, the GRS and PFRS unlike some financial creditors actually had assets in their pension fund, so there was an existing basis by which those assets would allow for a higher rate of recovery ab initio, that is, from the start, as opposed to the financial creditors to whom we owed money but did not have a cache of money available to pay them.

Q. So there -- let me break down what I heard. You tell me if I got it right.

A. Mm-hmm.

Q. I heard that the basis for the decision to discriminate in the first plan was in part the compassion for retirees, but it was also in part the fact that there were assets in the retirement systems?

A. Yes.

Q. Okay, anything other than those two things?

A. No, as I said, there are a number of other factors in trying to incentivize a workforce, in trying to keep the covenant that the City made, a number of other

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2 factors, but generally those are the ones that seem to
3 be driving a sort of the treatment of those classes.

4 Q. Okay, so I heard compassion, the fact that assets
5 exist in the retirement trust, trying to incentivize
6 City workers. Anything else that justified that level
7 of discrimination?

8 A. There may have been other things that I said in terms
9 of the level of different treatment, you call
10 discrimination. That was reported out in the first
11 plan, but generally speaking, the principal driving
12 force was that the retirement systems had assets in
13 them and we were trying to bring levels down below to
14 the predictable funding level verse -- based upon the
15 unfunded actuarial liability of those funds. You
16 start with a cache of money in those funds that are
17 available conceivably to pay pensions if you are able
18 to adjust the payment levels, whereas with financial
19 creditors, we didn't have a cache of money available
20 to them. We're paying them out of existing City cash
21 flow going forward.

22 Q. But you understand that the amount of assets in the
23 pension systems, the difference between the amount of
24 assets and what is needed to fully fund pensions is
25 called the UAAL?

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2 A. Yes.

3 Q. And you understand that the pension class sizes were
4 for the UAAL, correct?

5 A. Well, the pension class sizes were for the UAAL but
6 they took into account that those funds had assets in
7 them, as well, so you're trying to determine the
8 unfunded actuarial liability, but when you try to
9 determine the pension payments you also include the
10 amount of assets in the funds.

11 Q. So the existence of assets in the retirement systems
12 was something that you considered in your
13 discrimination analysis, in your decision to propose a
14 plan that discriminated?

15 A. In my decision to propose a plan that provided
16 different payout levels for creditors, yes.

17 Q. And it weighed in favor of it?

18 A. It weighed in -- not so much in favor, I'm -- favor of
19 what?

20 Q. Well, in favor of paying pensioners more than
21 financial creditors?

22 A. The fact that there are assets in the funds assisted
23 us in paying them more than financial creditors, yes.

24 Q. Okay. What information did you base that -- that
25 decision to provide differing levels of recoveries on?

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2 A. Well, there is a number of information. Generally, we
3 would go through the expected debt service of the
4 City, what anticipated revenue streams would be going
5 forward, what the City would need for reinvestment and
6 revitalization, what the funding levels of the pension
7 funds were, amongst others, there was a number of
8 information and -- and it was a very dynamic and fluid
9 process as we examined a number of different potential
10 outcomes and scenarios.

11 Q. I understand that there is an enormous amount of
12 information that implicates what the City has to give
13 to creditors at all, okay? And I heard your answer to
14 relate to that subject, correct?

15 A. Right.

16 Q. I'm asking a more specific question, which is with
17 respect to your decision to pay classes 10 and 11 more
18 than financial creditors, what information did you
19 rely on in making that decision? So this is more not
20 how much money is there but who will get what money is
21 available.

22 A. All of the information I just mentioned. I mean,
23 there is a number of different factors that go into
24 what we can potentially pay financial creditors, and
25 we took all that information in on a number of

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different scenarios and reduced.

Q. But what information did you rely upon in deciding how to allocate the money that could be paid in terms of whether it went to pensioners or whether it went to financial creditors?

A. I think we're discussing the same answer. We would look at information regarding the unfunded liability of the funds, the amount of anticipated revenue the City could take in and could expect to take in, the obligations that the City could afford, the potential obligations of the City going forward for retiree healthcare, for instance, as well as for current employee, active employee healthcare obligations, just a number of different information that we could provide, we could analyze to try to get at a determination of what we could pay different classes of creditors.

Q. But that tells you what the total size of the pie is, correct?

A. But it also tells us what we think we can pay.

Q. Right, to creditors?

A. Right, there's an analysis of the total debt load which we published in the June 14th proposal, and then there is analysis of the revenue streams that come

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into the City that we could use to service those obligations, not just financial creditors but pensioners, and then there's an analysis of what we would need to do to take the revenue stream to address the unfunded actuarial liability and other obligations that we would have with financial creditors, and we would run different scenarios as to how that could be done --

Q. Okay.

A. -- in this environment.

Q. I'm looking -- I don't think -- we may not be communicating well, I'm sure I'm not asking my questions correctly, but once you've determined how much you have in theory to distribute to creditors there's a separate decision that has to be made as to which creditors should get what parts of that pie; do you agree with that statement?

A. Yes, I think that's fair.

Q. And I want to focus on the process of deciding which creditors get which part of the pie, and I want to understand what information you relied upon in deciding to give pensioners a larger slice of the pie than you gave financial creditors --

A. Yeah.

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Q. -- in the first plan.

A. Yeah, let's do it this way: There are factors that you're considering, and I think what you're trying to get at is judgment, which is different than the factors that come in to what you have and who you can pay. And the judgment decisions about what we could pay took into account a number of these other factors regarding revenue streams, but ultimately in deciding what we could pay pensioners, there were, I would say, several different factors which really spurred that decision.

One was the amount of funds that were in the various pension funds. Two was the obligation to try to take into account the situation of these pensioners. Three was that at some point, it became apparent that there was going to be additional money coming in in the form of the Grand Bargain from third-party guarantors who were -- as a condition of those grants that they be dedicated solely to pension.

Three was that at some point, it became clear that the pension funds, themselves, were performing better over the year and had experienced better rate of returns than in prior years, and, in fact, the asset values went up. All of those factors

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2 went into the decision to decide how much we could pay
3 pensioners.

4 Q. Any other factors than that?

5 A. Probably, but I don't recall them sitting here today.

6 Q. And when you say the obligation to take into account
7 the pensioner situation, that's referring to the human
8 dimension that we talked about earlier, correct?

9 A. Yes, I think that's fair.

10 Q. Now, let's go forward in time from the first plan
11 of -- that we've just been talking about, which is
12 February 21?

13 A. Yes, mm-hmm.

14 Q. Okay. Let's go forward in time to April 1, 2014,
15 which is about 40 days later, okay? April Fools' Day.

16 A. I wasn't going to say that but --

17 Q. You know I picked it. Now, let's -- so put yourself
18 back in your state of mind as of April 1, 2014, okay?

19 A. Right.

20 Q. As of that time, you still didn't have agreement with
21 any of the retiree associations or committees or
22 retirement systems with respect to the proposed
23 pension cuts, correct?

24 A. The reason I'm not recalling whether or not that's
25 accurate, at some point in the spring -- we did not

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2 have publicly announced agreements, I think that's
3 fair.

4 Q. You didn't have any publicly announced agreements with
5 anyone I don't believe until April 15th, 2014; is that
6 correct?

7 A. When -- you may have information regarding -- when you
8 say anyone, you mean any creditors?

9 Q. I mean any of these retiree representative --

10 A. Okay.

11 Q. -- bodies that --

12 A. Okay.

13 Q. -- or that I take to mean retiree associations,
14 pension systems official committee.

15 A. Okay. And so you're taking out the swaps, for
16 instance, you're not including --

17 Q. Oh, absolutely.

18 A. Okay.

19 Q. Yeah, I'm just talking about what the pensioners --

20 A. Okay, yes, I think that's fair.

21 Q. Okay. And just to get the record clear, as of -- your
22 recollection as you sit here today is that as of
23 April 1st, you did not have agreements with any of the
24 retiree representative parties, correct?

25 A. Yes, I don't think we have formally announced

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2 plan are different from the pension cuts we've been
3 discussing up until this point?

4 A. Yes.

5 Q. The pension cuts are reduced to 4-1/2 percent for GRS,
6 with the elimination of COLA, and 0 percent for PFRS
7 with the elimination of approximately 45 percent of
8 the COLA, correct?

9 A. I think that's accurate.

10 Q. There are also additional nuances with respect to the
11 possibility for restoration and ASF recoupment that
12 were parts of both of those deals, correct?

13 A. ASF is part of GRS but restoration is part of GRS and
14 PFRS.

15 Q. Okay, but I just want to basically get on the same
16 page with you that the deals that you ultimately got
17 the retiree representative groups to buy into were at
18 the 4-1/2 percent cut level on the GRS pension and the
19 0 percent cut level on the PFRS pension, correct?

20 A. Yes.

21 Q. And that represented a substantial improvement in the
22 deal from the prior proposed cuts of 26 percent and 6
23 percent, correct?

24 A. I think that's fair.

25 Q. And you understand that at the current proposed rates

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2 of recovery in the plan that is currently on file,
3 classes 10 and 11 are being paid more than the COP
4 holders; isn't that correct?

5 A. Yeah, are being paid more than as proposed to the COP
6 holders, yes.

7 Q. Okay. And they're being paid substantially more,
8 correct?

9 A. I think it's a significant difference.

10 Q. Okay. Now, in fact, under the current plan, according
11 to the disclosure statement the GRS and PFRS classes
12 recover approximately 59 cents on the dollar, correct?

13 A. Yeah, I think in the plan, obviously, there's a
14 schedule that shows percentage, but if that's the
15 schedule, yes.

16 Q. I think it's actually technically 60 cents for GRS and
17 59 cents for PFRS?

18 A. Yeah, that's --

19 Q. That's about correct, right?

20 A. That's about correct, maybe a little bit lower on the
21 PFR -- but that's about correct.

22 Q. Okay, and the COPs recover at most 10 cents on the
23 dollar, correct?

24 A. Yeah, there's a range of potential recovery for the
25 certificates of participation but it's stated at 10

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percent.

Q. That's based, in part, on the fact that there is an invalidity lawsuit against the certificates and the potential to settle that as part of the plan, correct?

A. Yes, I think that's fair.

Q. The 10 cents that's in the disclosure statement represents the best the COPs can do if they are vindicated in the invalidity lawsuit, meaning that the certificates are found to be valid?

A. Well, no, that's why I said I think there's a range. The --

Q. I mean the 10 cents is the best they can do?

A. Yeah, I -- okay, 10 cent -- the 10 cents is our estimate of the best they could do.

Q. Okay, so with respect to the plan that is on file, and that you're seeking to confirm, with respect to classes 10 and 11 on the one hand and the COPs holder class on the other hand, why did you decide to discriminate in favor of classes 10 and 11 as compared to the COPs holders? And by discriminate, I mean pay them more recovery than you've paid to the COPs holder class?

A. Right. As we said earlier this morning, in addition to, you know, the assets that the retirement funds had

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in them, which would mean we'd have less ground to make up as opposed to the liability of the certificates which is a -- an ongoing liability, as between the concerns that the obligations, the human dimension, the responsibility the City had to try to keep its covenant with its employees and retirees as opposed to legal arguments that have been made in the papers regarding the COPs that we believe they are void ab initio and that we have no obligation and probably a number of other factors that I'm just not recalling as I sit here today, that resulted in us proposing in the plan that the GRS and PFRS beneficiaries receive a higher recovery than the COPs.

Q. Okay. So my question is trying to drive on the factors that you considered in exercising your judgment to discriminate between these two classes.

A. Right.

Q. Do you understand that?

A. Yes.

Q. And you identified four, the existence of assets held in the trusts --

A. Mm-hmm.

Q. -- the human dimension that we've discussed earlier, the City's covenant to pay retirees their pensions --

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2 A. Mm-hmm.

3 Q. -- and the invalidity of the COPs?

4 A. Yeah, the legal position of the COPs, but there may
5 be -- there may be other factors that go into that
6 analysis. I'm just trying to give you off the top of
7 my head sitting here today some of the factors that we
8 considered in terms of proposing the plan.

9 Q. Well --

10 A. There may be --

11 Q. Oh, sorry.

12 A. There may be factors having to do with negotiated
13 positions, with a number of other issues, so I don't
14 want to give you the impression that the only thing
15 are the factors you're writing down, there may be
16 other considerations we took into account.

17 Q. Well, I guess I'll say understood, but you are the
18 decider, right?

19 A. Yes, I am.

20 Q. Okay, and so --

21 A. I am the -- the decider has a different connotation to
22 it, so I'm the emergency manager.

23 Q. You're talking what, the "W" connotation?

24 A. Yeah.

25 Q. Oh, okay.

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2 A. I don't want to --

3 Q. How easy (ph.) do you think I'm going to get on cross?

4 A. Yeah, yeah, I don't want to read in the paper Kevyn

5 Orr --

6 Q. Okay.

7 A. -- thinks he's the decider.

8 Q. Kevyn Orr --

9 A. I'm the emergency manager who's charged under 436 with
10 discharging certain obligations in a sole discretion
11 including making decisions regarding proposals to
12 classes of creditors.

13 Q. You are the man. No. Okay. They were ready to hang
14 up.

15 (Whereupon conference phone makes noise.)

16 BY MR. HACKNEY:

17 Q. I'm out of here, they said, okay, this deposition is
18 off the rails. Hang up and...

19 MR. ALBERTS: Should we go off the record
20 for a minute?

21 BY MR. HACKNEY:

22 Q. Hold on, let me just finish this. It's just a couple
23 more questions, then perhaps we can take a break.

24 Then we can reconnect our friends on the phone and...

25 Okay, so you are the emergency manager that

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correct?

A. Yeah, I don't want to give you the impression that, you know, I say something, and next thing I know, there's a discovery request well, prove that you considered this or any -- there are many other factors that went into the decision; those are the ones I can remember sitting here today.

Q. Okay. But is it fair to say that you can remember all of the important factors?

A. Those are the ones that I can remember today, there may be other ones that are important that I'm just simply not remembering.

Q. So there may be important factors that went into your decision that you can't recall as you sit here today?

A. As I sit here today.

Q. Okay. This is a good time to take a break, so especially with this phone thing.

A. I'm -- do you want to take? I'm good to go.

Q. No, I know you are, but I got to --

A. Okay, you want to take a break, okay.

MR. SHUMAKER: Let's take a break.

VIDEO TECHNICIAN: The time is 10:16 a.m., we are now off the record.

(Recess taken at 10:16 a.m.)

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2 (Back on the record at 10:35 a.m.)

3 VIDEO TECHNICIAN: The time is now 10:35
4 a.m., we are back on record.

5 BY MR. HACKNEY:

6 Q. Mr. Orr, did you discuss your testimony with your
7 counsel at the break?

8 A. No.

9 Q. Okay, I want to talk about with respect to the four
10 grounds that you can recall, the information that you
11 relied upon with respect to each.

12 A. Mm-hmm, yes.

13 Q. And I wanted to start with the assets held in the
14 trusts.

15 A. Mm-hmm.

16 Q. That was the first ground you mentioned. For that, I
17 take it you relied upon data from the retirement trust
18 regarding the various levels of their assets?

19 A. We relied on data from the retirement trust including
20 reports by Gabriel Roeder, their actuary, as well as
21 their own documents but we also relied upon data from
22 Milliman, which was the actuary hired by the City, and
23 analyses prepared by E & Y, Miller Buckfire, and
24 Conway MacKenzie, as well.

25 Q. Is it fair to say that to describe the body of

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information that you relied upon with respect to this first ground which are assets held in the trust that you relied on either financial information from the trusts about their assets or expert analysis relating to appropriate discount and other actuarial rates to be applied to those assets and liabilities?

A. Yes, I relied on things other than my own analysis from professionals who do this.

Q. But did I accurately describe kind of the body of information?

A. Yeah, you did. Yes, you did.

Q. Okay. Now, with respect to the human dimension that we talked about, with respect to the classes 10 and 11, what type of information did you rely upon in connection with that judgment?

A. Well, I think some of the information we just discussed is captured within that, as well as the representatives on the art -- on the retiree committee, the pension boards, as well, as well as individual meetings with individual employees and pensioners who recount their stories in detail, as well as statements made in court by the court itself as well as others. I listened to the September 19th, 2013 tape of the meeting of creditors. I listened to

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the blog of last -- was it last Monday or Tuesday's objectors meeting, general objectors meeting as well as far as the impact, and from time to time obviously I meet people on the street as well as hear their accounts and press reports.

Q. Is it fair to describe this body of information as, you know, oral testimonies to you about the personal hardship people will endure if there are -- if steeper cuts are imposed?

A. Yeah, I think it's fair to say oral testimony as well as, as I said, the actual analyses that are provided that, for instance, will tell you that general retirement system employees get an average of 19,400 approximately in their pension, whereas PFRS may be in the neighborhood of the mid-thirties. So it's actually analyses as well as oral testimony, oral statements, written statements, and press reports.

Q. Okay. So you relied on aggregate financial data about the approximate average size of pensions as well as oral testimonies to you about how steeper cuts would impose personal hardship on the pensioners?

A. Yeah, the approximate average size -- you know, included in this documentation for instance, I've reviewed rolls of information regarding the actual

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amount of pensions that thousands of pensioners have, which have been provided to me by professionals. So it's not just summary information, it's actually sometimes raw data discussions with -- with my advisors, including attorneys, as well as discussions with representatives including depositions of the -- of the -- some of whom are here today, representatives of the various funds.

Q. The financial data that you relied upon, though, was the -- was limited to the size of their pensions, whether it was aggregate or individual pensions, right?

A. No.

Q. You didn't review personal financial information of any of the retirees, did you?

A. No, we didn't review -- I didn't review financial statements of retirees but I did review reports as indexed by account number on the pensions of individual retirees.

Q. Yes.

A. Yeah. I did review things like that.

Q. I'm trying to say that when it came to the financial information you considered, it related to the size of the pensions, correct?

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2 A. As opposed to the personal financial situation of each
3 individual pensioner?

4 Q. Right.

5 A. No, I have seen no information like that.

6 Q. And you haven't seen that in the aggregate, either,
7 correct?

8 A. Well, let's be careful with aggregate. I mean, you
9 know, 14,000 approximately pensioners live within the
10 City of Detroit and/or Wayne County, I believe, so a
11 significant percentage live here, and when you look at
12 aggregate demographic data, you know, 40 percent of
13 our residents live at or below the poverty line per
14 capita GDP, all of this, I have reviewed aggregate
15 data, U.S. Census Bureau --

16 Q. But this is stuff -- sorry to interrupt you.

17 A. Yeah.

18 Q. This is stuff that relates generally to the
19 population?

20 A. Right.

21 Q. It's not specific data to the retirees?

22 A. No, but there was aggregate data that I did review
23 regarding retirees as a group but not their personal
24 financial information.

25 Q. Right, the aggregate data on the retirees was with

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respect to their mean pensions.

A. No, it was also with probable -- it wasn't just pensions, it also -- there was aggregate data regarding healthcare, there's aggregate data regarding an alternative savings fund recoupment. So I know you're focusing principally on pensions, but I looked at a number of data as a composite of what the impact would be to these pensioners from a human dimension.

Q. Okay, and evaluating the personal hardship they would suffer?

A. Correct.

Q. Okay. And that was -- was that one of the most important things that drove you in connection with this decision? It seems like it's moved you.

A. Well, I don't know if it's one of the most important, but it -- all of them are important, the amount of money, the Grand Bargain, the -- the grantors have given us \$866 million we didn't have seven months ago, so that's pretty important.

The human dimension certainly is something that you have to take into account. These are real people with real consequences. So all of it's fairly important to me.

Q. Okay. Now, you -- the third thing you talked about

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was the City's covenant, which I understood you to mean the City's promise that it would pay these people their pensions?

A. Yes.

Q. And I take it from that the information you would have relied upon was just the contract saying that folks were entitled to these pensions?

A. No, you know, we -- I also had access -- you know, I talked with some City employees, for instance, who currently work for the City, Gary Brown, who is a retired Detroit police officer but is on a personal service contract here in the City now, PSC, and I talked to him about the historical commitments that the City has made, he's a lifetime resident, been here a long time. Chief Craig, who was born here, for instance, and his parents have been in the City, I talked to him. I talked to individuals.

So it's not just an analysis of, say, raw data. I mean, I have communications with people on staff here in the City who will ask me if they can come in and talk to me, and I'll listen to them.

Q. I guess what I meant here is one of the factors you identified as -- as informing your judgment with respect to what to pay classes 10 and 11 versus COPs

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holders, you identified was the City's covenant.

A. Yes.

Q. And I took that to mean the fact that the City had a contractual obligation to pay these people?

A. Right, and what I'm trying to relay to you is it's not just a fact that the City had a contractual obligation; it is the commitment and reliance on that commitment behind that contractual obligation that various City employees and retirees will come and express to me in very real terms what this means to them.

Q. I see.

A. And so the covenant is not just a technical document, it is also an expectation, a reliance, a commitment the City has made, and employees and retirees express it to me in very -- sometimes very candid terms.

Q. I see. What you're saying is you relied not only the existence of the legal obligation to pay but also testimonies you got from people that they had relied on that?

A. Yes.

Q. And isn't it fair to say that this is another element of the human dimension, which is the unfairness of cutting the pensions of people who relied on the

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2 City's covenant in making decisions about how to
3 allocate their work time?

4 A. You could say that.

5 Q. And then the last issue that you identified was the
6 invalidity of the COPs; do you remember that?

7 A. Yes.

8 Q. And that was something that you factored into your
9 decision in terms of paying the COPs less than classes
10 10 and 11, correct?

11 A. Yes.

12 Q. And I take it you relied upon legal analysis from your
13 counsel about the potential invalidity of the COPs,
14 correct?

15 A. Yes.

16 Q. And I know that there had been a lawsuit filed prior
17 to the time of the current plan being filed, but I
18 assume that if I asked you questions about what your
19 attorneys had advised you with respect to the
20 invalidity of the COPs you'll invoke the
21 attorney-client privilege and decline to answer?

22 A. Yes.

23 Q. Okay, so I hope we can stipulate that if I ask a bunch
24 of questions about how the COPs analysis factored into
25 the decision that the attorney-client privilege will

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2 be invoked?

3 MR. SHUMAKER: Assuming your question gets
4 to communications between counsel and Mr. Orr, yes.

5 BY MR. HACKNEY:

6 Q. Well, I mean, did you -- did you -- in assessing the
7 invalidity of the COPs as a factor justifying the
8 level of discrimination, did you consider anything
9 other than legal advice around the invalidity of the
10 COPs? It seems like a legal question.

11 A. It's a legal question, but in an effort to be
12 forthcoming and fair to you, I'd have to say yes, and
13 I'll try to tell you, for instance, without discussing
14 the -- and going afield of many discussions, legal
15 opinions, analyses, meetings, written opinions, that I
16 received from counsel.

17 So for instance, in looking at the COPs, in
18 addition to those things, you know, I examined news
19 reports about that transaction, I think I've even
20 examined those -- some of those before I got here.
21 Reports, for instance, by the auditor general that it
22 questioned the propriety and validity of the COPs
23 reports at that time when -- I think it was Auditor
24 General Hart (ph.) back in 2005, City Council
25 statements that were made. Statements made by the

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City treasurer back then that it was invalid and inappropriate to enter into the COPs and that it would make the City bankrupt and that the City should have declared bankruptcy in 2005.

So there's other data that I looked at to inform myself, just not the legal analyses about position of the COPs, and some of that data was contemporaneous with when they were initially entered into and some of that was subsequent to that.

Q. And you identified a number of individuals or reports that you had read; I didn't hear any lawyers in any of those things. Were there?

A. None of my lawyers were in those things, so there was -- there's, you know, document -- documentary evidence that is short of the legal opinions I got from my counsel.

Q. Okay, so but to tie it up, was the principal information that you relied upon legal advice conveyed to you by your lawyers about the invalidity of the COPs?

A. Yes.

Q. And I -- just so I understand the way the judge -- the factor plays through your judgment, you looked at the potential invalidity of the COPs and viewed that as

1 KEVYN ORR, VOLUME 2

2 one reason to pay the COPs on their best day 10 cents?

3 A. Yeah, I don't know -- I don't want to give the
4 impression that it was that binary, you know, a number
5 of issues, as I said before, went into what we could
6 afford to pay --

7 Q. Yes.

8 A. -- the validity of the claim, which is pretty typical
9 in bankruptcies, all that stuff, but I think that's a
10 fair statement.

11 Q. Okay, I'm talking when you were deciding how to divide
12 the pie, the COPs best day recovery was impacted by
13 this factor of the potential invalidity of the COPs?

14 A. Yes.

15 Q. Now, with respect to the information in these four
16 areas that we've just talked about, the information
17 that relates to each of the four factors you
18 identified --

19 A. Mm-hmm.

20 Q. -- was there a material change in this body of
21 information between April 1 and April 15 of 2014?

22 A. I don't know, you say material change, what are you --
23 what do you mean?

24 Q. Is there anything that sticks out to you with respect
25 to any of your four factors and the information

1 KEVYN ORR, VOLUME 2

2 associated with each that changed materially between
3 April 1 and April 15?

4 A. To be frank with you, I can't -- I can't recall if
5 there was, but I don't -- nothing jumps out at me.

6 Q. Okay. Now, in structuring the plan, did you take
7 advice from Miller Buckfire?

8 A. Yes.

9 Q. And in deciding what levels of discrimination between
10 creditors was appropriate, did you also take advice
11 from Miller Buckfire?

12 A. Yes.

13 Q. And did you specifically take advice from Ken
14 Buckfire?

15 A. I -- I would have regular restructions (sic) with Ken
16 and other members of his team, so I think it's fair to
17 say yes.

18 Q. Did Mr. Buckfire recommend to you that when it came to
19 evaluating the recovery of the retirees that the City
20 should consider the pension recoveries in combination
21 with the OPEB recoveries in making a determination as
22 to what the level of discrimination was?

23 MR. SHUMAKER: Object to the form.

24 BY MR. HACKNEY:

25 Q. Do you understand my question?

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listening to some of the statements that were made,
looking at some of the representations that have been
made by the City over the years, I think it's fair to
say there is a number of different information that
came in concerning the obligations to retirees.

BY MR. HACKNEY:

Q. Now, did you -- did you attempt to determine what
other creditors' expectations were vis-a-vis the City?

A. Oh, I certainly heard from other creditors,
expectations from rating agencies, from financial
publications, from statements made in the press from
them, as well, that their expectation was that they
were going to be paid.

Q. For example, did you talk to any of the -- of the COPs
holders to determine what their expectations were
about when they invested?

A. I know I talked to some of their representatives. I
don't know if I talked to any of the principals or any
of the individual holders.

Q. Okay. Fair to say that you haven't talked to any COPs
holder who told you that they expected not to be
repaid, correct?

A. I think that's fair.

Q. And you haven't talked to any other financial creditor

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who told you that their expectation was that they would not be repaid, correct?

A. There was a conference in New York last fall where some creditors as identified who represented that they had interest in Detroit's debt said that they knew that the City probably would not be able to pay this debt but nonetheless they expected to be paid and they were going to punish the City. They came up to me at the conference with their finger in my face about that. But I can't -- I don't know -- I didn't take their card, I don't know their name, but generally speaking, I -- I was -- excluding conversations we've had in mediation discussions, which are protected by the order, I don't recall with specificity any particular creditor principal coming up to me and saying they did not expect to be paid.

Q. I mean, let me try to tie it up this way. By the way, I can't believe that thing actually happened to you, only in New York.

A. No, it's happened to me many times --

Q. No offense to New Yorkers --

A. Oh, it was ugly.

Q. We don't do that in Chicago but...

MR. PEREZ: I thought you were a Michigan

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2 boy.

3 MR. HACKNEY: I am, born and raised, but
4 I've actually lived in Chicago now --

5 THE WITNESS: Are you coming back? Are you
6 coming back?

7 MR. HACKNEY: No, no, I'm a Chicagoan.

8 THE WITNESS: Okay.

9 MR. HACKNEY: You lost me.

10 BY MR. HACKNEY:

11 Q. Let me see if I can tie it up this way. You did not
12 attempt to undertake a systematic analysis of what all
13 the creditors thought that they were going to get when
14 they made their respective investment decisions to
15 decide who should get what?

16 A. I did not poll all of the creditors regarding what
17 they thought they were going to get.

18 Q. Okay, and you didn't factor that into your conclusion,
19 correct?

20 A. No. Not at least that I can say -- I can't say what
21 discussions were made in mediation, but I -- publicly
22 the answer would be no.

23 Q. I am talking about, you know, your state of mind,
24 though. I'm saying that you didn't go and pick
25 winners and losers based on what people's expectations

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were when they invested?

A. No, I don't view it as picking winners and losers because I don't think anybody here has said to me that they think of themselves as winners.

We tried to do an analysis of what we could afford to pay based upon the factors we discussed before with an understanding that \$866 million was coming in as a gift from grantors with specific condition that that money would flow to pensioners as opposed to any other creditor class and that we would accept that gift with that condition when those discussions were made.

Q. Understood, I'm just trying to say -- picking winners and losers was a euphemism, I didn't mean to be casual. You didn't set respective recovery levels based on the fact that you thought some creditors should be paid less based on their expectations when they invested as opposed to others?

A. No, that really wasn't a factor. I mean, did I personally believe that there may have been creditors who were more capable of doing underwriting about the City's debt condition has been -- as had been reported in various publications that I'd read, yes, I understood that but I didn't sit down and say, you

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know, based upon your expectation of being paid, you know, this is what we can pay. We generally drove the determinations based upon the revenue stream and the strengths and weaknesses and negotiations with any particular creditor group?

Q. And I take it you did not, for example, go back and review the due diligence materials that were provided to the COPs creditors in the 2005 and 2006 transactions, correct?

A. I didn't do it personally but some of my advisors did.

Q. Okay. But, I mean, you don't know what was in those due diligence materials?

A. No, some of those materials, I -- I did see some of those materials and I saw some of the legal opinions that were provided back then.

Q. In fact, the legal opinions that were provided back then told COPs holders that the COPs were legal, correct?

A. Some of them did, there was one law firm in the City that refused to do the transaction because they opined or at least informed people that they thought it was illegal.

Q. And do you recall what the COPs holders were told about the nature of the remedy that would exist if the

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2 City failed to pay the service corps?

3 A. No.

4 Q. Do you know who the COPs holders were at the time of
5 the COPs offering?

6 A. There was a list of who they were, but sitting here
7 off the top of my head, no.

8 MR. HACKNEY: Let's mark this as our next
9 exhibit.

10 MARKED FOR IDENTIFICATION:

11 DEPOSITION EXHIBIT 21

12 11:29 a.m.

13 BY MR. HACKNEY:

14 Q. Mr. Orr, is this the offering memorandum that was put
15 out in connection with the 2005 COPs?

16 A. Without sitting here and reading through it, to the
17 best of my knowledge, this appears like a document
18 I've seen before as the offering document.

19 Q. And have you read this document before?

20 A. I have not read the document in total; I have read
21 pieces of it.

22 Q. Okay. You didn't just sit down and one day say, I
23 want to read the offering memorandum?

24 A. I did not read through the whole document.

25 Q. Now, if you look at page 8, I want to read you a

1 KEVYN ORR, VOLUME 2

2 Q. In part?

3 A. I think that is fair.

4 Q. You know, Mr. Orr, I've reached a good stopping point,
5 I think.

6 MR. SHUMAKER: Sure.

7 MR. HACKNEY: There's a lot of people in
8 the room, but I kind of defer to you.

9 THE WITNESS: No, I'm good, but if you guys
10 think that makes sense, we have a thing that we need
11 to do.

12 MR. HACKNEY: What time?

13 MR. HERTZBERG: At 1:15 for 5 minutes.

14 THE WITNESS: Okay.

15 MR. HACKNEY: That will be perfect then,
16 we'll take an hour for lunch, and then I'll see you at
17 1:30.

18 THE WITNESS: Okay.

19 VIDEO TECHNICIAN: The time is now 12:31
20 p.m., we are now off the record.

21 (Recess taken at 12:31 p.m.)

22 (Back on the record at 1:36 p.m.)

23 VIDEO TECHNICIAN: The time is 1:36 p.m.,
24 we are back on the record.

25 BY MR. HACKNEY:

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2 Q. Mr. Orr, welcome back from lunch.

3 A. Thank you, Mr. Hackney.

4 Q. Okay. So Mr. Orr, you're aware that certain
5 charitable foundations have agreed to contributed
6 money to the City's pension obligations in exchange
7 for the City conveying its art collection into a
8 public trust; is that correct?

9 A. Yes.

10 Q. And I take it if I ask you questions about your
11 communications with the charitable foundations in
12 connection with their agreement to contribute this
13 money, you will refuse to answer on the grounds of the
14 mediation order's confidentiality provisions; is that
15 correct?

16 A. Yes, generally for most of them, I think that's
17 correct.

18 Q. And just for the record, you didn't have any such
19 conversations prior to the entry of the mediation
20 order which was at some point in September of 2013?

21 A. Yes, that's correct.

22 Q. Okay.

23 A. Well, let me think. I think I had one meeting with
24 Darren Walker at Ford Foundation, but it was not about
25 a contribution, it was just a meet and greet.

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2 Q. Okay.

3 A. Okay?

4 Q. Yeah, I saw that in the documents, and there were some
5 issues about the Ford Foundation and the building that
6 they owned or something that --

7 A. I didn't even get into all that.

8 Q. Okay.

9 A. It was just hi, how are you, they were helping us with
10 some grants, helping us stand up a grants
11 administrator.

12 Q. So I guess I want to make a record of something I
13 understand from the City's position but it is the
14 City's position that communications with the
15 foundation are either part of or incidental to the
16 mediation, correct?

17 MR. SHUMAKER: I believe that's correct.
18 Again, I think you could fish outside the contours of
19 those mediation talks but my understanding is that all
20 those talks were within the context of mediation.

21 BY MR. HACKNEY:

22 Q. Yeah, I mean, I don't want to ask a hundred questions
23 today to establish what I think is relatively well
24 established, which is that you're not, generally
25 speaking, going to discuss your conversations with the

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foundations, correct?

A. That is correct. You know, I may -- let me say this generally. I may have had meetings with foundation principals outside of the confines of the mediation, just hail-fellow-well-met, saw them at an event, how are you. There were no substantive conversations about the contribution that did not occur outside of the mediation order.

Q. And that's fine, because the only ones that I really want to ask you about are ones that relate to the Grand Bargain?

A. Right, right.

Q. And those would fall under the gambit of the mediation?

A. Those would fall under the gambit of mediation.

Q. Now, if I asked you your state of mind based on what you understood the foundations to be willing to do or what you thought they would be willing to do, you would also invoke the mediation order to the extent his state of mind was created by communications of the foundation, correct?

MR. SHUMAKER: I think that's right because I don't see how he could give you his impressions or his understanding without going into what was going on